

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of: | |
| PARENT ON BEHALF OF STUDENT, | OAH CASE NO. 2014020448 (Primary) |
| v. | |
| ALHAMBRA UNIFIED SCHOOL DISTRICT, | |
| ALHAMBRA UNIFIED SCHOOL DISTRICT, | OAH CASE NO. 2013090186 (Secondary) |
| v. | |
| PARENT ON BEHALF OF STUDENT. | ORDER FOLLOWING PRE-HEARING CONFERENCE; GRANTING STUDENT LEAVE TO FILE A SECOND AMENDED DUE PROCESS HEARING REQUEST; VACATING DATES |

On May 23, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Alexa J. Hohensee, Office of Administrative Hearings (OAH). Steven Wyner , Attorney at Law, appeared on behalf of Student. Cole Dalton, Attorney at Law, appeared on behalf of Alhambra Unified School District (District). The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. District Case Withdrawn and Dates Vacated. On the record during the PHC, District withdrew its due process hearing request naming Student, OAH case number 2013090186 (District's Case). District's case is withdrawn and all dates in District's Case are vacated.

In light of the withdrawal, the consolidation of District's Case with Student's claims against District, OAH case number 2014020448 (Student's Case), is moot. Student's Case will proceed as a non-consolidated matter.

2. Student Withdrawal of Pre-February 10, 2012 Claims. On the record during the PHC, Student withdrew all claims pre-dating February 10, 2011.

3. Leave to Amend Granted. Prior to the PHC, student filed a motion for leave to file a second amended due process request (complaint) to: (i) add allegations regarding District's development of its anti-bullying program, (ii) abandon his contention that claims for the 2010-2011 and 2011-2012 school years are not time-barred, (iii) to allege that District and its Board of Education violated the Safe Place to Learn Act (Ed. Code, § 234 et seq.) and to add the Board of education as a party, and (iv) to "restate, clarify and supplement" allegations in support of existing claims, plus Student's new claim that District violated the Safe Place to Learn Act. District opposed the motion as prejudicially made late in this action, adding claims outside of the jurisdiction of OAH, and an attempt to add an improper party. Student's reply was not received in time for ALJ review prior to the PHC.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student's motion to amend was timely filed more than five days prior to the scheduled hearing date. During discussions at the PHC, the ALJ determined that Student's amended complaint alleged a new claim that Student was denied a free appropriate public education (FAPE), and Parents were denied an opportunity to meaningfully participate in the individualized education program (IEP) process, because the District had not disclosed at IEP team meetings, or offered Student attendance in, an anti-bullying program available to District students to learn anti-bullying skills and strategies. Student's counsel represented that Parents had only become aware that the program existed after the PHC in April 2014.

Leave for Student to file a second amended complaint in Student's Case is granted. As discussed at the PHC, this order does not bar District from moving to dismiss portions of Student's second amended complaint, if it chooses to do so.

4. District's Motion to Dismiss is Moot. In light of leave being granted for Student to file a second amended complaint, District's motion to dismiss portions of Student's first amended complaint, which was pending at the PHC, is rendered moot. No order on that motion will be issued.

ORDER

1. All dates in District's Case, OAH case number 2013090186, are vacated and that matter will be closed.
2. Student's Case, OAH case number 2014020448, is no longer consolidated with District's Case, and will proceed as a non-consolidated matter.
3. Student's motion for leave to file a second amended complaint is granted.
4. Student's second amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

DATE: May 27, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings